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BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF THE ISSUANCE OF)
A SUBSTANTIAL DEVELOPMENT PERMIT)
TO CONDOMINIUM BUILDERS, INC. BY)
THE CITY OF SEATTLE)

MARGARET COUGHLIN,)
Appellant,)

v.)

CITY OF SEATTLE and CONDOMINIUM)
BUILDERS, INC.,)

Respondents.)

SHB No. 77-18

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

A formal hearing was held in this matter before the Shorelines Hearings Board, W. A. Gissberg presiding, Chris Smith, Dave J. Mooney, Robert E. Beaty, William A. Johnson, and Reid Shockey on August 10 and 11, 1977 in Seattle, Washington.

Appellant Margaret Coughlin was represented by J. Richard Aramburu; Peter L. Buck appeared for respondent permittee Condominium Builders, Inc.; Assistant Corporation Counsel Ross Radley represented respondent

1 City of Seattle.

2 Having heard the testimony, having examined the exhibits, having
3 read trial memoranda submitted by counsel, the Shorelines Hearings
4 Board makes the following

5 FINDINGS OF FACT

6 I

7 The substantial development permit at issue in this appeal
8 authorizes the construction of a forty-unit condominium at 3100-3124
9 West Commodore Way on the shoreline of the Salmon Bay Waterway.

10 The proposed development is one building 280 feet long by 65 feet
11 deep with a height of 35 feet above the average grade of the sloping
12 lot. (The roof level rises approximately 16 feet above West Commodore
13 Way.) The stucco structure will contain three stories, a basement
14 level, and an underground garage with sixty parking spaces. At the
15 permittee's expense, ten to twelve additional on-street parking
16 spaces will be created on the right of way for West Commodore Way.
17 An accessory swimming pool waterward of the condominium is also
18 authorized.

19 A five foot walkway to the east of the unit will continue for
20 approximately 300 feet along the shoreline and provide regulated public
21 access. At the hearing before this Board, the permittee agreed to
22 construct a sidewalk the entire length of the subject property on the
23 north side of West Commodore Way.

24 II

25 The legal description of the property to be developed under the
26 instant permit includes both the site for the proposed condominium

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1 and the adjoining land now occupied by the Lockhaven Marina. The
2 entire four-acre parcel is owned by Lockhaven Marina, Inc. with the
3 applicant Condominium Builders, Inc. having an option to purchase
4 the condominium site. After the project is completed, the Lockhaven
5 Marina, Inc. will continue to have an interest therein by virtue of
6 its joint venture arrangement with Condominium Builders, Inc. The
7 property is to be subdivided subsequent to the issuance of the
8 substantial development permit with the eastern half (hereafter the
9 "marina site") and the waterfront portion of the western half of the
10 property (hereafter the "condominium site") retained by the marina.

11 III

12 The property lies within the Magnolia Community in an area
13 designated urban stable (US) under the Seattle Master Program. The
14 marina site is zoned general industrial (IG) and the condominium site
15 is currently zoned multi-family residential (RM).

16 The condominium site is directly southeast of the Hiram D.
17 Chittenden Locks. To the northwest of the site is the Army Corps of
18 Engineers' fish ladder. Immediately west of the site and south
19 across West Commodore Way are three condominium buildings having a
20 total of seventy-six units. The instant property is the last
21 undeveloped lot within the RM zone in this area. Further to the
22 west of the subject site is a single family residential community
23 with approximately 200 homes. Within a block of the site to the
24 west is Commodore Park, a development of the City of Seattle and
25

1 the Corps providing a 5.3 acre "passive park" for fish ladder access.
2 Discovery Park lies to the west beyond the residential community.

3 The arterial serving this area is West Commodore Way, a two-way,
4 two lane "neighborhood collector" with a 24-foot paved width and a
5 right of way of 60 feet.

6 IV

7 Application for a substantial development permit for construction
8 of the "Lockhaven Condominium" was filed by Condominium Builders, Inc.
9 on January 17, 1977. A proposed Declaration of Non-Significance
10 was issued by the City of Seattle's Department of Community Development
11 on March 23, 1977; a Final Declaration issued on April 13, 1977.
12 This threshold determination was appealed to the City's hearings
13 examiner by the appellant in this matter on May 31, 1977. Following
14 a public hearing on June 1, 1977, the hearings examiner found that
15 the project would not have a significant effect on the environment
16 and affirmed the decision of the Department of Community Development
17 on June 16, 1977.

18 On April 29, 1977, prior to the processing of the SEPA appeal,
19 a substantial development permit was granted to the applicant subject
20 to the following conditions:

- 21 1) That prior to issuance of a building permit for the
22 proposed condominium, the following be accomplished:
 - 23 a. Filing for record with the County Auditor of a
24 scenic easement, granted to the City of Seattle,
25 which scenic easement is to be similar in content
26 to the Declaration of Covenants, Conditions and
Restrictions dated April 6, 1977, a copy of which
is attached hereto as Exhibit A, and which is to
be in a form acceptable to the Corporation Counsel
of the City of Seattle.

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b. Filing for record with the County Auditor of an approved short subdivision, as provided in Ordinance 105636, dividing the property substantially as indicated in the approved plans; such short subdivision to include a permanent easement for pedestrian public access substantially as shown on sheet 4 of the approved plans.

2) That the applicant, with the consent of the Seattle Board of Public Works, improve the West Commodore Way right-of-way for public parking adjacent to the proposed project, substantially as shown on sheet 4 of the approved plans. Failure to obtain Board authorization, in spite of good faith efforts on the part of the applicant, shall not void the permit.

3) That drains be installed to control storm water runoff from the site, such storm drainage system to include oil separators and siltation controls [sic] on all storm drains emptying into the public waters.

V

From the permit as conditioned appellant filed a request for review on May 27, 1977 citing four bases for vacation of the permit: (1) the condominium unit at this location is an inappropriate use of the shoreline, (2) the proposal fails to meet the view corridor requirements of the master program, (3) in reducing available parking for the marina site, the proposal violates the Seattle Zoning Code, and (4) an Environmental Impact Statement should have been prepared for the project.

VI

RCW 90.58.020 provides

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

It is within this context that appellant's concerns regarding the

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1 project's alleged aggravation of existing parking and traffic problems
2 were expressed.

3 The project will generate a daily average of 280 vehicular trips.
4 Road capacity for West Commodore Way, assuming some parking on the
5 curbs of the arterial, is estimated to be 4,000 vehicles per day. No
6 official traffic counts have been taken by the City as the present
7 use of the road is judged by the traffic engineer to be 1,000 vehicles
8 per day, well below the capacity figure.

9 The increase in local traffic experienced over the past several years
10 will continue as a result of the government facilities made available to
11 the public in the area, particularly the Locks, the fish ladder, and
12 the soon to be completed Commodore Park. These attractions cause
13 car and bus congestion to the west of the project site; however, it
14 is expected that over ninety percent of the condominium traffic will
15 travel east on West Commodore Way. Similarly, current and future demands
16 for parking space will be concentrated west of the project site. There
17 is no apparent parking problem at either the condominium site or the
18 marina site at this time. With the provision of 60 parking spaces on-site
19 (one and one-half times the zoning code requirements) and the creation of
20 ten to twelve on-street parking spaces, the development should not have
21 an adverse impact on parking in the area.

22 VII

23 At the subject site, the Seattle Master Program requires a view
24
25

1 corridor of 35 percent.¹ In determining that the project met this
2 requirement, the Department of Community Development assessed the views
3 available on both the condominium site and the marina site. Further,
4 in making such assessments, the Department calculated partial as well
5 as clear view corridors.

6 In its calculation, the denominator for the Department was not
7 the frontage on West Commodore Way, 775 feet, but rather the average
8 lot width of the property, 690 feet, requiring a view corridor of
9 241 feet. Upon construction of the instant project, clear views of
10 the waterway across the entire subject property would equal approximately
11 210 feet. Additionally, on the marina site, partial views of the
12 Waterway and the Ballard shoreline are available over the existing
13 covered moorages because of the steepness of the lot (West Commodore
14 Way is 50 feet above the Waterway). Thus, it was calculated that the
15 total open and partial view available across the entire property was
16 approximately 400 feet. On these facts, the Department determined
17 that upon completion of the instant project the view corridor would
18 be "the equivalent of" 35 percent. To ensure that no further impair-
19 ment of view occur on the property, the permit was conditioned
20 to require the filing of a scenic easement. (See Finding of Fact IV
21 supra.)

22

23 1. 21A.35 Bulk Regulations - Yards, View Corridors and Residential
24 Setbacks, Table 2.B.3, p. 10.

25 21A.155 Definitions "U through Z" ". . . VIEW CORRIDOR: An open
26 air space on a lot affording a clear view across the lot to the water from
the abutting street." p. 60.

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VIII

The Seattle Zoning Code, Section 5.2, provides:

No . . . legally established offstreet parking or loading area . . . shall be reduced in area or dimension below the minimum required by this Ordinance, nor shall any . . . legally established offstreet parking or loading area less than the minimum required by this Ordinance be further reduced

The Zoning Code requires that a marina provide one parking space for every two slips. The Lockhaven Marina has approximately 100 slips (51 covered moorages, 18 open moorages, and lengths of open docks which can accommodate over 30 boats depending upon size). Thirty-six lined parking spaces and pavement for an additional 10 to 20 cars exist on the marina site. Sporadic parking use of a small gravel area on the condominium site is made by marina patrons. The marina has never sought nor received any official authority for use of this area as marina parking. A few additional parking spaces are required for occupants of the small office building existing on the marina site.

Any Conclusion of Law hereinafter stated which may be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Shorelines Hearings Board comes to these

CONCLUSIONS OF LAW

1

In reviewing the validity of a substantial development permit, the Shorelines Hearings Board evaluates the consistency of the proposed project with the policies and provisions of the Shoreline Management Act (SMA) the Department of Ecology guidelines and regulations issued pursuant thereto, and the respective master program. The project as conditioned by the City of Seattle and this Order is consistent with

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1 these criteria.

2 II

3 While not identified as a preferred use in the SMA, multiple
4 family dwellings can be a permitted use on the shoreline. However, the
5 Shorelines Hearings Board has ruled that under RCW 90.58.020 a permit
6 can be vacated or conditioned if the design or density of the develop-
7 ment is damaging to the shoreline environment. In the instant matter
8 any traffic congestion which may now exist will not be measurably
9 aggravated by the development. Further, the permittee must take
10 specific mitigative measures to minimize any parking demands generated
11 by the condominium.

12 With the guarantee of regulated public access imposed under the
3 permit, the condominium development is an appropriate use of the
14 Seattle shoreline and does not violate the policies of the SMA.

15 III

16 The use of the marina site area of the subject property to increase
17 the amount of potential view corridors available to meet the master
18 program requirement is consistent with both the master program and good
19 planning. Whether the relationship between Condominium Builders, Inc.
20 and Lockhaven Marina, Inc. is properly characterized as a joint venture,
21 an agency coupled with an interest, etc. is of no legal or practical
22 consequence in this case. The development authorized under the instant
23 permit for the entire property, marina site as well as condominium site,
24 is limited to the single condominium unit in which the present land
25 owner will have an interest upon its completion. The filing of the
26 Declaration of Covenants, Conditions, and Restrictions wherein

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1 Condominium Builders, Inc. and Lockhaven Marina, Inc. collectively are
2 the Declarant assures that any future development on the marina site
3 will not further reduce the view corridors now available. Neither the
4 purpose of the view corridor requirement nor the public interest is
5 prejudiced by such an arrangement.

6 It is unfortunate that the master program itself gives little
7 guidance to the Shorelines Hearings Board, the City of Seattle admin-
8 istrative staff, or the public with regard to the view corridor
9 percentage requirement. A general written formula which would retain
10 administrative flexibility for such a calculation would mitigate against
11 confusion and capricious decision-making. However, the manner in which
12 the new corridor was assessed in this instance appears consistent with
13 the underlying purpose of the requirement and the result is not violative
14 of any provision of the SMA or the DOE regulations promulgated pursuant
15 thereto. Under these circumstances, the Board will give deference to
16 the local agency's reasonable interpretation of an ambiguous provision in
17 its own master program. In addition, although not argued by the parties,
18 the master program definition of "view corridor" appears to protect a
19 view across the lot to the water. With this emphasis in mind, clear
20 views to the water would exist from West Commodore Way across the entire
21 marina site.

22 IV

23 Parking at the Lockhaven Marina has never been reviewed by the
24 City of Seattle for its compliance with the Seattle Zoning Code.
25 Facts presented to the Board in this regard were too imprecise to
26 conclude with any certainty that the spaces available for the uses
27 which would continue at the site fall short of Code requirements.

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S F No 9928-A

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1 Even if the facts did establish that the marina failed to meet Code
2 requirements, this in itself would not transform the occasionally used
3 gravel area on the condominium site into a "legally established off
4 street parking . . . area" protected under the Code. The testimony of
5 a city planner that in Seattle an occasionally used area never officially
6 recognized by the City did not constitute a "legally established off
7 street parking . . . area" under the Code was not controverted.

8 V

9 The Shorelines Hearings Board does have full de novo review of a
10 project's consistency with the Shoreline Management Act. However, the
11 Board's jurisdiction with regard to SEPA allegations is derived not
12 from the SMA but from the State Environmental Policy Act (SEPA) which
3 provides:

14 . . . In any action involving an attack on a determination
15 by a governmental agency relative to the requirement or the
16 absence of the requirement, or the adequacy of a "detailed
17 statement," the decision of the governmental agency shall
be accorded substantial weight. RCW 43.21C.090. (Emphasis
added.)

18 While the Board may, in its discretion, consider evidence in
19 addition to that which was before the local agency, it nonetheless
20 must accord the decision of such a governmental agency substantial
21 weight. Upon review of all the facts presented to the Board in this
22 case, the Board concludes that the decision of the Department of
23 Community Development to issue a Final Declaration of Non Significance
24 for the instant project was not clearly erroneous.

25 Any Finding of Fact which should be deemed a Conclusion of Law
26 is hereby adopted as such.

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1 Therefore, the Shorelines Hearings Board issues this

2 ORDER

3 The substantial development permit granted to Condominium Builders,
4 Inc. by the City of Seattle is remanded to the City of Seattle for
5 reissuance subject to the following additional conditions, and as so
6 conditioned is affirmed:

7 1. The Declaration of Covenants, Conditions, and Restrictions
8 dated April 6, 1977, shall be amended to delete (a) the proviso,
9 "unless . . . manner" under "Preservation of Views," page 1, and (b)
10 the entire section "Amendment and Termination," page 2.

11 2. The permittee shall construct a pedestrian sidewalk on the north
12 side of West Commodore Way along the entire length of the subject
13 property (775 feet).

14 DONE this 7th day of September 1977

15 SHORELINES HEARINGS BOARD

16 W. A. GISSBERG
17 W. A. GISSBERG, Chairman

18 Robert E. Beatty
19 ROBERT E. BEATTY, Member

20 William A. Johnson
21 WILLIAM A. JOHNSON, Member

22 Dave J. Mooney
23 DAVE J. MOONEY, Member

24 Reid Shockey
25 REID SHOCKEY, Member

26 Chris Smith
27 CHRIS SMITH, Member

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